Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

GREENAWALT, CHARLES E., LOCAL UNION NO. 764, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, TEAMSTERS JOINT COUNCIL NO. 53, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,
Petitioners,

v.

PAWLAK, JOHN A. AND STAFFORD, JAMES,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Does Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411(a)(4), preclude a labor organization from recovering its expenses from a member who filed a lawsuit against the union prior to exhausting available internal union remedies and the case was dismissed for that reason where:

1) the labor organization's constitution requires exhaustion of internal union remedies prior to resorting to the judiciary;

2) the labor organization's internal union remedies have been found by a court to be adequate;

3) the labor organization's constitution specifically authorizes collection of the union's expenses from the member who filed the premature suit; and,

4) no effort is made by the union to collect its expenses until after a court has determined that the member had an obligation to exhaust the available internal union procedures.

PARTIES IN THE COURT OF APPEALS

The parties before the Third Circuit Court of Appeals were Charles E. Greenawalt, President of Local Union No. 764; Local Union No. 764, Teamsters, Chauffeurs, Warehousemen and Helpers; Teamsters Joint Council No. 53; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Petitioners in this Court); and John A. Pawlak and James Stafford (Respondents in this Court).

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GREENAWALT, CHARLES E., LOCAL UNION NO. 764,
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,
TEAMSTERS JOINT COUNCIL NO. 53,
AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS,
Petitioners,

v.

PAWLAK, JOHN A. AND STAFFORD, JAMES,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The International Brotherhood of Teamsters, its affiliated Local Union 764, Joint Council No. 53, and Charles E. Greenawalt (collectively "Teamsters") petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case on August 20, 1980.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is not officially reported but is printed

in the Appendix at 1a and is unofficially reported at 105 L.R.R.M. 2169. The decision of the United States District Court for the Middle District of Pennsylvania is officially reported at 477 F. Supp. 149. (A. 13a)[1]

JURISDICTION

The decision and judgment of the Court of Appeals was entered on August 20, 1980. (A. 25a) The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions of the Labor-Management Reporting and Disclosure Act (LMRDA), Section 101(a)(4) and 102, 29 U.S.C. 411(a)(4) and 412, are reproduced in the Appendix. (A. 27a)[2]

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[1] References to pages in the appendix to this petition are designated "A".

[2] Section 101(a)(4) provides:

> PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

STATEMENT OF THE CASE

In 1977, the United States District Court for the Middle District of Pennslyvania dismissed a suit brought under Section 301 of the National Labor Relations Act, 29 U.S.C. § 185, against Teamsters Local Union 764 because it found that plaintiff, John Pawlak, had "made no attempt whatsoever to challenge the flouting of his grievance by invoking the steps through which a rank-and-file employee can bring charges against a local union officer." *Pawlak* v. *Teamsters, Local Union 764*, 444 F. Supp. 807, 810 (M.D. Pa. 1977). The district court took special notice of the provisions of Article XIX of the Teamsters' constitution which permit any member of a local union to file internal union charges against any other member or officer and found that "the Union's internal machinery does make it feasible for Pawlak to overcome the Local's recalcitrance to have his grievance processed without the aid of this Court." *Id.* at 811.

Pawlak subsequently filed an appeal with the United States Court of Appeals for the Third Circuit which summarily affirmed the decision of the district court. 571 F.2d 572 (3rd Cir. 1978).

After this litigation had been concluded, Pawlak initiated proceedings within the union to redress his alleged grievances but failed to pursue them. Thereafter, four members of Local 764 filed charges against Pawlak with the Local Union Executive Board alleging that Pawlak had violated Article XIX, Section 12(b) of the International Constitution.[3] Specifically, Pawlak was charged

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[3] Article XIX, Section 12(b) provides:

> Where a member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the Inter-

with having unsuccessfully sued Local 764 without having first exhausted the available internal union remedies as required by Article XIX, Section 12(a),[4] thereby causing the union to incur expenses to defend the suit in the amount of $2,635. Following a hearing before the Local Union Executive Board, Pawlak was directed to pay the sum of $2,635 to cover the Local's litigation expenses. Pawlak pursued his internal union appeals to Joint Council 53 and the General Executive Board, both of which affirmed the reimbursement of Local 764's legal expenses.

Thereafter, a complaint was filed in the United States District Court for the Middle District of Pennsylvania on October 23, 1978, by Pawlak and another member of Local 764, alleging a violation of Section 101(a)(4) of the LMRDA as well as of other provisions of that stat-

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national Union may be assessed against such individual, Local Union, Joint Council or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.

Where such court action is by an individual or by a Local Union, Joint Council or other subordinate body against a Local Union, Joint Council or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the Local Union, Joint Council or other subordinate body proceeded against in court.

[4] Article XIX, Section 12(a) provides:

Every member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have been rendered or who claims to be aggrieved, shall be obliged to exhaust all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency against the International Union, any subordinate body or any officer or employee thereof.

ute, not here relevant, and seeking injunctive and other forms of equitable relief.[5]

DECISIONS OF THE DISTRICT COURT

The unresolved issues in this case were presented to the district court on cross motions for summary judgment. The district court issued a memorandum opinion on September 27, 1979, granting Pawlak's motion for summary judgment and holding that Article XIX, Section 12(b) of the Teamsters' constitution could not be enforced in any circumstances. (A. 28a) The district court, relying on *NLRB* v. *Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418 (1968), held that the Teamsters' constitution violated the statute because it placed members "in a position of having to guess whether the Court will require exhaustion in a particular case." (A. 17a) Accordingly, the district court enjoined enforcement of Article XIX, Section 12(b) of the Constitution and ordered the Teamsters to publish a notice of the court's decision in the official monthly publication of the International Union.

In a separate Order entered on November 16, 1979, the district court specified the content and form of the notice to be published. (A. 20a) However, the district court denied other requested relief, finding that "there is nothing in the record to justify Plaintiffs' contention that union members have or will be subject to threats and intimidation by officials of Teamsters locals." (A. 21a)

The International Union complied with this Order by publishing the prescribed notice in the January, 1980 issue of the "International Teamster" magazine.

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[5] The district court's jurisdiction was invoked pursuant to 28 U.S.C. § 1331.

DECISION OF THE THIRD CIRCUIT

In affirming the district court's decision, the Third Circuit Court of Appeals relied upon the decision of the United States Court of Appeals for the Ninth Circuit in *Operating Engineers Local 3* v. *Burroughs*, 417 F.2d 370 (9th Cir. 1969), *cert. denied*, 397 U.S. 916 (1970), and found that the distinction set forth by this Court in *Marine and Shipbuilding Workers*, *supra*, between suits involving "internal" union and "external" matters was inapplicable to LMRDA disputes. (A. 9a) The Third Circuit rejected the Teamsters' argument that collection of the union's litgation expenses after a court had determined that a member had an obligation to exhaust the available internal union remedies was permitted by the statute and was not prohibited by the *Marine and Shipbuilding Workers*, *supra*, decision. As had the district court, the Third Circuit found that the "prospect that a union member who sues his union would risk liability under 12(b) for attorneys fees incurred by the union, in the event the court required the member to exhaust internal remedies, would, we believe, chill union members in the exercise of their statutory right to sue the union." (A. 10a)

REASON FOR GRANTING THE WRIT

The Court of Appeals for the Third Circuit Has Decided Important Questions of Federal Law Based Upon An Erroneous Interpretation of A Decision of This Court

The Third Circuit has decided that this Court interpreted Section 101(a)(4) of the LMRDA in the *Marine and Shipbuilding Workers*, *supra*, case as precluding a union from recovering the expenses it incurred in successfully defending against a lawsuit brought by a member who has failed to exhaust the available internal union remedies after a court, not the union, has decided

that those internal union remedies should have been invoked prior to the institution of litigation. In fact, this Court's decision in the *Marine and Shipbuilding Workers, supra,* case established only that Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(A), precluded a union from expelling a member for filing a charge with the National Labor Relations Board prior to exhausting internal union remedies. *Id.* at 425-426. In that case, the union decided that the member had an obligation to exhaust available union remedies and imposed a punitive sanction upon him for failing to do so. With respect to the tangential issue of Section 101(a)(4) of the LMRDA, the Court did no more than resolve in favor of the judiciary the question of whether the unions or the judiciary had the authority to determine if internal union remedies had to be exhausted before bringing a suit against a union. *Id.* at 426-428.

In so ruling, this Court implicitly approved discipline in cases involving "internal union matters," a finding criticized by Mr. Justice Harlan in his concurring opinion. He disagreed with the majority's conclusion that "a union may punish a member for his invocation of his remedies before a court or agency 'where the complaint or grievance . . . concern[s] an internal union matter,' and thus does not touch any 'part of the public domain covered by the Act . . . .'" *Id.* at 429.

Although both the Ninth and Third Circuits concluded, relying upon the *Marine and Shipbuilding Workers, supra,* decision, that subjecting a union member to the possibility that he might be liable for the payment of his union's litigation expenses incurred in defending against his premature lawsuit had a chilling effect on his LMRDA protected right to sue his union, that question was never decided by this Court. In fact, this Court's opinion clearly imposed upon a union member seeking judicial review of alleged grievances the responsibility

to determine, in advance of litigation, whether his dispute involved purely "internal union matters" or impacted on the "public domain." Again, Mr. Justice Harlan departed from the majority's analysis and noted that:

> Assuming arguendo that there are member-union grievances untouched by the various federal labor statutes, this dichotomy has, it seems to me, precisely the disadvantage that the Court has found in the Third Circuit's construction of the proviso: it compels a member to gamble his union membership, and often his employment, on the accuracy of his understanding of the federal labor laws. *Id.* at 429.

Neither the Ninth Circuit in *Burroughs*, *supra*, nor the Third Circuit in the instant case was justified in focusing upon Mr. Justice Harlan's reservations in *Marine and Shipbuilding Workers*, *supra*, and relying upon them, as though Mr. Justice Harlan were reflecting the views of the majority of this Court, effectively to eliminate the proviso to Section 101(a)(4). The question of whether a union can recover its reasonable costs, after a court has ruled that a member had an obligation to exhaust the available internal union remedies prior to instituting litigation against his union, not only was left open by this Court but also is fundamental to the application of Section 101(a)(4).

The Third Circuit's negative answer effectively eliminates the proviso to Section 101(a)(4) from the statute. Such a development invites union members to disregard the four-month exhaustion period contained in the proviso, in favor of immediate review by the judiciary of internal grievances against their unions. From the member's viewpoint, if he goes directly to court with an internal union grievance, at worst, the court may require him to go back to the union to exhaust those available procedures before returning to the court for ultimate

resolution of the dispute. At best, the court will resolve his complaints against the union in the first instance.

It is clear from the legislative history that the proviso was carefully considered, extensively debated, and was not intended to replace existing doctrine supporting the concept of exhaustion of internal remedies. For example, Senator John Kennedy, co-sponsor of S. 1555 and a Senate conferee, declared that the proviso was not intended "to invalidate the considerable body of State and Federal court decisions of many years standing which require, or do not require, the exhaustion of internal remedies prior to court intervention depending upon the reasonableness of such requirements in terms of the facts and circumstances of a particular case." 105 Cong. Rec. at 17899 (1959).[6]

Elimination of the proviso to Section 101(a)(4) will have the undesirable effect of not only increasing judicial intervention in the purely internal affairs of unions but will also tend to erode the exhaustion doctrine in those cases involving employer-employee disputes. The courts will be inundated by suits brought under Section 301(a) of the NLRA, 29 U.S.C. § 185(a), involving disputes which are presently resolved by contractual grievance procedures.[7] The incentive for a member to avoid grievance procedures in favor of seeking relief from a court is even greater in the Section 301 context than in the Section 101(a)(4) situation, for the simple reason that decisions made under contractual grievance procedures most often are final and binding and are subject to a limited review

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[6] Also, statements of Representatives John McCormack and Griffin at 105 Cong. Rec. 15835 and 18152 (1959), respectively.

[7] Indeed, the total elimination of the exhaustion of remedies doctrine in the Section 301 context has been advocated by counsel for Pawlak. See, Fox and Sonenthal, *Section 301 and Exhaustion of Intra-Union Appeals: A Misbegotten Marriage*, 128 Pa. L. Rev. 989, 1035 (1980).

by the courts. *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965).[8]

Not only is the burden of this increased litigation on the judiciary obvious and undesirable, but, as this Court has recognized, the cost of litigation can "impair the financial stability of unions," "deplete union treasuries" and impair the "effectiveness of unions as collective bargaining agents." *IBEW* v. *Foust*, 442 U.S. 42, 48, 50-51 (1979). Exhaustion of union remedies may result in favor of the union member and conclude the dispute without litigation.

The proviso to Section 101(a)(4) should not be judicially eliminated by an erroneous interpretation of the *Marine and Shipbuilding Workers, supra*, decision. If significant changes are to be made in the statutory structure to reallocate the respective responsibilities of the judiciary and unions for resolving internal union disputes, it is for the Congress to legislate that reallocation of responsibilities.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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ROBERT M. BAPTISTE
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Attorneys for Petitioners

DATED: November 18, 1980

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[8] See: Robbins, *Limits of Union Disciplinary Power Under Federal Law*, 24 Fla. L. Rev. 308, 324 (1972).

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 79-2587 & 79-2780

JOHN A. PAWLAK AND JAMES STAFFORD

v.

CHARLES E. GREENAWALT; LOCAL UNION NO. 764, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS; TEAMSTERS JOINT COUNCIL NO. 53; AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Charles E. Greenawalt and Local Union No. 764
Teamsters, Chauffeurs, Warehousemen and Helpers,

Appellants

On Appeal from the United States District Court
For the Middle District of Pennsylvania

(C.A. No. 78-1035)

Argued June 10, 1980

Before: ADAMS, VAN DUSEN and HIGGINBOTHAM,
Circuit Judges

(Filed August 20, 1980)

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OPINION OF THE COURT

ADAMS, *Circuit Judge.*

The principal issue presented on this appeal is whether the Labor-Management Reporting and Disclosure Act, 29

U.S.C. § 401-531 (1976), prevents a union from fining one of its members, pursuant to a provision in the union's constitution, for suing the union without first exhausting internal union procedures. The district court, in granting summary judgment for the plaintiffs, held that such a fine is invalid under the Act. We affirm.

I.

John Pawlak, a member of Local Union No. 764, Teamsters, Chauffers, Warehousemen & Helpers, filed an action three years ago in the district court contesting a change in the working conditions at his place of employment. He alleged that his employer, in instituting the change, had violated the applicable collective bargaining agreement under which Pawlak worked. Pawlak further charged that Local 764 had violated its duty of fair representation by failing to process his grievance concerning the change in conditions. The district court dismissed the complaint on the ground that Pawlak had not exhausted internal union remedies before filing suit. *Pawlak* v. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 764*, 444 F. Supp 807 (M.D. Pa. 1977); *aff'd mem.* 571 F.2d 572 (3d Cir. 1978).

Pawlak then attempted to pursue his grievance through the union's internal channels, but his charges were dismissed by the Executive Committee of Local 764, and he did not pursue them further. Thereafter, Local 764 filed internal charges against Pawlak, accusing him of violating Article XIX § 6(1) and 12(b) of the Constitution of the International Brotherhood of Teamsters.[1] Specifically,

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[1] Article XIX, Section 12(a) provides:

> Every member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body against whom charges have been preferred and disciplinary action taken as a result thereof, or against whom adverse rulings or decisions have

Pawlak was charged with having sued Local 764 without exhausting internal remedies, thereby causing the union to expend $2,635 defending the suit. Following a hearing before the Local Union Executive Board, Pawlak was fined the sum of $2,635. On appeal, both the Joint Council and General Executive Board of the Union affirmed the imposition of the fine.

On October 23, 1978, Pawlak and James Stafford, also a member of Local 764, filed a complaint in the district court against Local 764, Charles Greenawalt, President of the Local, the Teamsters Joint Council, and the International Union. The complaint challenged the validity of the fine on the grounds that: (1) the fine unlawfully limited Pawlak's right to sue under the Labor Management Reporting and Disclosure Act § 101(a)(4) and (2) Pawlak had been denied a fair hearing by the union tribunals. Pawlak and Stafford also sought injunctive

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been rendered or who claims to be aggrieved, shall be obliged to exhause all remedies provided for in this Constitution and by the International Union before resorting to any court, tribunal or agency against the International Union, any subordinate body of any officer or employee thereof.

Article XIX, Section 12(b) provides;

> Where a member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the International Union may be assessed against such individual, Local Union, Joint Council or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.
>
> Where such court action is by an individual or by a Local Union, Joint Council, or other subordinate body against a Local Union, Joint Council or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the Local Union, Joint Council or other subordinate body proceeded against in court.

relief against enforcement of § 12(b) of the Constitution of the International Brotherhood of Teamsters, an order requiring that notice of the decision be published in the monthly *International Teamsters* magazine, and punitive damages.

The district court denied a motion by Local 764 and Greenawalt to dismiss Pawlak's complaint, although it did dismiss the fair hearing allegations. As to the latter point, the court believed that because the underlying facts were not in dispute, a transcript of the proceedings was not necessary for the court to decide whether Pawlak's statutory rights had been violated. *Pawlak* v. *Greenawalt*, 464 F. Supp. 1265, 1271 (M.D. Pa. 1979).[2] Local 764 then filed a counterclaim seeking an order directing Pawlak to pay the fine of $2,635 that had been imposed by the union tribunals.

All parties thereafter moved for summary judgment. The district court granted the plaintiffs' motion and denied the defendants' motion. *Pawlak* v. *Greenawalt*, 477 F. Supp. 149, (M.D. Pa. 1979). We affirm.

II.

Section 101(a)(4) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. 411(a)(4) (1976), also referred to as the Landrum-Griffin Act, specifically protects the right of a union member to sue his union. The Act provides that:

> No labor organization shall limit the right of any member thereof to institute an action in any court . . .

The only restriction on this protection is contained in the clause which states:

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[2] Because of our decision that the Union could not lawfully fine Pawlak for failing to exhaust internal procedures, we need not reach the issue whether Pawlak was denied a fair hearing.

> Provided, that any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative procedures against such organizations or any officer thereof . . .

The union contends that the fine imposed on Pawlak for his failure to exhaust internal remedies was lawful under the above proviso.

Although the language of the clause left unclear whether Congress intended the courts or the unions to implement it, the proviso has since been interpreted as empowering the courts to enforce it. The Supreme Court addressed the issue in *NLRB* v. *Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418 (1968). There, an employee was expelled from the union for filing charges with the National Labor Relations Board (NLRB) without first utilizing internal union procedures. The Supreme Court concluded that his expulsion violated § 8(b)(1)(A) of the National Labor Relations Act. In reaching its decision, the Court reviewed the legislative history of § 101(a)(4) of the Landrum Griffin Act and interpreted the proviso as follows:

> We conclude that "may be required" [the words in the proviso] is *not a grant of authority to unions more firmly to police their members* but a statement of policy that the public tribunals whose aid is invoked may in their discretion stay their hands for four months, while the aggrieved person seeks relief within the union. We read it, in other words, as installing in this labor field a regime comparable to that which prevails in other areas of law before the federal courts, which often stay their hands while a litigant seeks administrative relief before the appropriate agency. (emphasis added)

In *Operating Engineers Local 3* v. *Burroughs*, 417 F.2d 370 (9th Cir. 1969) *cert. denied*, 397 U.S. 916 (1970), which followed *Marine Workers*, an employee was fined by his union because he had brought an action against the union without first exhausting internal procedures. The district court held that any discipline imposed on the employee for having sued the union was void. In affirming, the court of appeals declared:

> Once it is established that the proviso in 29 U.S.C. § 411(a)(4) is a policy guide for the courts and not a grant of authority for the union, and we think that at least that much is established by *Marine Workers*, *supra*, then for the purpose of examining the limits of permissible union discipline we are left with these words: 'no labor organization shall limit the right of any member thereof to institute an action in any court or in any proceeding before any administrative agency. . . .'"

417 F.2d at 372. See also, *Lacy* v. *Highway & Local Motor Freight Employees Local 667*, No. C-74-454 (W.D. Tenn., filed Apr. 3, 1978), *aff'd*, Nos. 78-1254, 1255 (6th Cir., filed Apr. 29, 1980) (holding union discipline for failure to exhaust unlawful).

The district court in the present case relied on *Marine Workers* and *Burroughs* in deciding that the fine imposed on Pawlak was an unlawful limitation on his right to sue the union. The union contends, however, that this case is distinguishable from *Marine Workers* and that *Burroughs* was wrongly decided.

Specifically, the union argues that in *Marine Workers* the Supreme Court differentiated suits concerning purely internal matters ("internal" suits) from those which "touched a part of the public domain" ("external" suits). According to the union, *Marine Workers* holds that a member is exempt from discipline for failing to ex-

haust union remedies only if his suit is of the latter type, pertaining to the public domain, and not, as in this case, if the suit is strictly internal.

The issue before the Court in *Marine Workers* was whether the union had violated § 8(b) (1) (A) of the National Labor Relations Act by expelling an employee for the earlier charges he had filed with the NLRB which alleged that the union unlawfully caused his employer to discriminate against him. In the context of that case, a distinction between external and internal suits was relevant. As the Supreme Court noted, the proviso to § 8 (b) (1) (A) preserves to a union "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein" and "thus § 8(b) (1) (A) assures a union freedom of self regulation where its internal affairs are concerned." 391 U.S. at 423, 424. The Supreme Court determined, however, that "the proviso in § 8(b) (1) (A) . . . is not so broad as to give the union power to penalize a member who invokes the protection of the Act for a matter that is in the public domain and beyond the internal affairs of the union." 391 U.S. at 425.

In its *Burroughs* decision, the Ninth Circuit rejected the distinction between internal and external suits for the purpose of § 101(a) (4). Because of this, the union here urges that *Burroughs* was wrongly decided. *Burroughs* arose in the context of a suit under § 101(a) (4) rather than § 8(b) (1) (A). The court there noted that § 101(a) (4) refers to "an action in any court," and that nothing in the statute distinguishes between external and internal actions. Further, the *Burroughs* court stated that the right to sue under § 101(a) (4) would be less than fully protected if a member were required to make a pre-suit determination as to whether the action was internal or external. *See also, Ross* v. *International Brotherhood of Electrical Workers*, 544 F.2d 1022, 1024 (9th Cir. 1976).

We agree with the Ninth Circuit that the internal/external distinction is not relevant to suits brought under the Landrum-Griffin Act which, unlike the National Labor Relations Act, was designed specifically to regulate internal union affairs. Thus we hold that Pawlak's right to sue in this case was fully protected by § 101(a)(4) regardless of whether the suit is considered external or internal.[3]

The union's final argument in support of the validity of § 12(b) of the International Constitution is that the section is a compensatory measure that is necessary to advance the public policy favoring exhaustion of union remedies. Although we recognize the importance of the exhaustion doctrine, we do not agree that § 12(b) is indispensable to its operation, in light of the adequate safeguards that already exist.

As evidenced by this case, a member who cannot produce a valid reason for failing to exhaust union remedies is likely to have his suit dismissed. Moreover, if the member acted in bad faith in suing prior to exhausting internal procedures, the court might award attorneys fees to the union.[4] Here, the district court specifically found that the suit was not initiated in bad faith. 477 F. Supp. at 151.

Nor are we pursuaded by the union's argument that it imposed the fine as a compensatory matter only after

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[3] Even if the internal/external distinction were applied in this case, Pawlak's original suit might be classified as an external one. In *Marine Workers*, the suit was considered external because it implicated the employer as well as the union, and raised issues that could not be fully explored in internal union proceedings. Here, too, the employer was named as a defendant in the original complaint and thus the suit included issues that were not purely internal to the union.

[4] *Cf. Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240, 258-59 (1975).

the district court had dismissed Pawlak's original complaint for failure to exhaust. Allowing the union to recover attorneys fees in a case where the member acted in good faith would significantly limit the protections afforded by § 101(a)(4). The exhaustion requirement is not absolute; rather, its application is left to the discretion of the district court, based upon the facts of the particular case, *Marine Workers*, 391 U.S. at 426 fn. 8; *see generally* J. Bellace & A. Berkowitz, The Landrum Griffin Act Twenty Years of Federal Protection of Union Members' Rights 58-63 (University of Pennsylvania, The Wharton School, Industrial Research Unit 1979).

The prospect that a union member who sues his union would risk liability under § 12(b) for attorneys fees incurred by the union, in the event the court required the member to exhaust internal remedies, would, we believe, chill union members in the exercise of their statutory right to sue the union. This would undermine the very purpose of § 101(a)(4). *See Ryan* v. *International Brotherhood of Electrical Workers*, 361 F.2d 942 (7th Cir.), *cert. denied*, 385 U.S. 935 (1966). Consequently, we conclude that § 12(b) of the International Constitution is invalid in that it restricts the right of a union member to sue his union in a manner that is inconsistent with the Landrum-Griffin Act. The fine imposed on Pawlak by the union, pursuant to § 12(b), is also invalid.

III.

In its order of September 27, 1979 the district court permanently enjoined the Teamsters from enforcing § 12(b) of the International Constitution. The union objects to the scope of the injunction and requests that it be narrowed in two respects. First, the union asks that the injunction be applied only to individual union members, and that it not prohibit the union from imposing a fine against an officer, local union, joint council, or other

subordinate body. Second the union asks that the injunction be restricted so that it is applicable only in the United States, thereby permitting § 12(b) to be enforced against members and subordinate union bodies located in Canada.

We do not believe that the district court erred in enjoining the union from enforcing § 12(b). The district court found § 12(b) facially invalid because it unlawfully restricted the right of Pawlak and other union members to sue the union. Consequently, it enjoined the union from enforcing that section. Nothing in the district court's opinion indicates, however, that the court either addressed or decided the question whether officers, local unions or other union bodies were "members" protected by § 101(a)(4). We do not read the opinion of the district court as holding that a more narrowly drawn provision dealing only with officers and other union bodies would be unlawful, nor do we find it necessary to pass upon that important question at this time.[5]

Nor do we consider it necessary to limit application of the injunction to the United States. This suit concerns only an American union member; the union's ability to fine non-American members is not at issue. We do not interpret the injunction as prohibiting the union from enacting and enforcing a provision similar to § 12(b) but applicable solely to foreign members. Accordingly, we need not reach the question whether the union could be so enjoined under the Landrum-Griffin Act.

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[5] It should be noted the union neither raised this objection before the district court nor moved the court for an amendment of the injunction in this respect. Such an objection should have been raised with the district court in the first instance. See Rhoads v. Ford Motor Company, 514 F.2d 931, 933-34 (3d Cir. 1975).

IV.

The judgment of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 78-1035

JOHN A. PAWLAK, *et al.*,
Plaintiffs

vs.

CHARLES E. GREENAWALT, *et al.*,
Defendants

Complaint Filed 10/23/78

(Judge Muir)

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 78-1035

JOHN A. PAWLAK, *et al.*,
Plaintiffs

vs.

CHARLES E. GREENAWALT, *et al.*,
Defendants

Complaint Filed 10/23/78

(Judge Muir)

OPINION

MUIR, District Judge.

Plaintiffs have brought this action alleging violations of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 401 et seq. (the Act). Plaintiffs contend that the Defendants violated 29 U.S.C. § 411(4)(a) by fining Pawlak $2635.00 to recover the costs to Local 764 in defending a federal court action brought by Pawlak and dismissed because Pawlak did not exhaust internal union remedies. Plaintiffs initially sought compensatory and punitive damages as well as declaratory and injunctive relief. On June 26, 1979, the Court, upon consent of all parties, issued an order which preserved as the only issue for decision the Defendants' authority to impose and collect the fine.

On June 11, 1979, Plaintiff filed a motion for summary judgment accompanied by a brief. On June 26, 1979, defendants Greenawalt and Local 764 filed a brief in opposition to Plaintiffs' motion for summary judgment. On July 5, 1979, defendants Greenawalt and Local

764 filed a motion for summary judgment accompanied by a brief. On July 13, 1979, Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (Teamsters) filed a motion for summary judgment accompanied by a brief. On July 20, 1979, Plaintiffs filed briefs in opposition to Greenawalt's and the Local's motion and in reply to the brief in opposition to Plaintiffs' motion filed by Greenawalt and the Local. On July 30, 1979, Plaintiffs filed a brief in opposition to the Teamster's motion for summary judgment. On August 7, 1979, the Teamsters filed a brief in reply to Plaintiffs' brief. For the reasons which follow, the Court will grant Plaintiffs' motion for summary judgment and deny Defendants' motions for summary judgment.

Plaintiffs' contention can be simply stated. Title 29 § 411(a)(4) provides:

> "Protection of the right to sue—No labor organization shall limit the right of any member thereof to institute an action in any court . . .: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal . . . proceedings against such organizations or any officer thereof."

Plaintiffs maintain that the Teamsters Constitution, Article XIX, § 12(b), which provides that if a union member institutes a court action without exhausting internal remedies and is unsuccessful the local may recover all costs and expenses incurred by the Union in defending the action, is a limit on Pawlak's right to institute a court action.

Defendants argue that without the authority to recover the costs of defending an action such as Pawlak's the proviso in 29 U.S.C. § 411(a)(4) will be ineffective to

prevent court actions by union members before they attempt to exhaust union remedies. In National Labor Relations Board vs. Industrial Union of Marine & Shipbuilding Workers of America, 391 U.S. 418, 426 (1968), the United States Supreme Court held that the provision in § 411(a)(4) relating to exhaustion of reasonable hearing procedures

> ". . . is not a grant of authority to unions more firmly to police their members but a statement of policy that the public tribunals whose aid is invoked may in their discretion stay their hands for four months, while the aggrieved person seeks relief from the union."

It is the Court's view that inasmuch as a court has discretion whether to require exhaustion, the Teamsters' constitution limits the right of a member to sue by placing the member in a position of having to guess whether the Court will require exhaustion in a particular case. The Court recognizes that *Marine Workers* involved a complaint to the NLRB which the Supreme Court found to encompass broader public policy considerations than an internal union dispute. Because Congress has seen fit to legislate in the area of internal union rights, the Court concludes that a dispute of that nature is likely to be of significant concern.

The Court of Appeals for the Ninth Circuit, in Operating Engineers Local Union No. 3 vs. Burroughs, 417 F.2d 370 (9th Cir. 1969), *cert. denied*, 397 U.S. 916 (1970), held that it was a violation of § 411(a)(4) for a union to impose a fine upon a member who unsuccessfully sued the union without having exhausted internal union remedies. Defendants seek to distinguish *Burroughs* on the grounds that the fine in the case presently before this Court was not punishment because it represented only the costs incurred by the union in defending

Pawlak's prior action. It is the Court's view that the label attached to the imposition of a monetary penalty is immaterial. Section 411(a)(4) prohibits a union from limiting the rights of its members to sue. The imposition of the Local's costs of defending the action, a remedy which is granted by a Court in only extreme cases and which the Local 764 did not request after Pawlak's first action was dismissed, is, as a matter of law, a limit on the member's right to sue.

Defendants also maintain that Pawlak's prior action was instituted in bad faith. There is, however, no evidence in the record to support that assertion. Defendants concede that the decision whether to require exhaustion of internal union remedies rests in the discretion of the court. Inasmuch as Pawlak's supposed lack of good faith is based solely on his failure to exhaust internal union remedies, the Court concludes that the Defendants have not established that the prior action was commenced in bad faith. It is also the Court's view that Pawlak need not establish that the prior action was commenced in good faith. To the extent Defendants fear that without a good faith requirement they will be subject to the harassment of numerous lawsuits, it is the Court's view that the remedies available to all litigants, such as an award of attorney's fees in the appropriate case, is sufficient protection for these defendants. The Court finds no basis in the statute which provides an exception to the clear language of § 411(a)(4) prohibiting the union from placing limits on the right of its members to sue.

In addition to a declaratory judgment declaring Defendants' actions unlawful and an injunction prohibiting Defendants from collecting the fine and enforcing § 12(b) of Article XIX of the Teamsters constitution, Plaintiffs seek an order directing Teamsters to publicize this order in their monthly magazine as well as other relief directed toward notifying locals and members of the

Court's decision. It is the Court's view that relief of this kind is necessary because the existence of § 12(b) has a chilling effect on the exercise of members' rights to file suit. Counsel for Plaintiffs and the Teamsters will be directed to attempt to agree on the form of notice, and its method of publication, and shall file an agreed upon notice and proposal for publication within 20 days of the date of this order. If they are unable to agree, each party shall file its proposed notice and proposal for publication within 30 days from the date of this Order.

An appropriate order will be entered.

/s/ Muir
MUIR,
U.S. District Judge

DATED: September 27, 1979

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 78-1035

JOHN A. PAWLAK, *et al.*,
Plaintiffs

v.

CHARLES E. GREENAWALT, *et al.*,
Defendants

Complaint Filed 10/23/78

(Judge Muir)

November 16, 1979

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On September 27, 1979, the Court issued an order enjoining the Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (Teamsters) from enforcing Article XIX, § 12 (b) of their constitution because § 12(b) violates § 101 (a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(4). That order directed counsel for Plaintiffs and the Teamsters to attempt to agree upon a form of notice and method of publication whereby the Teamsters would notify its members of the Court's decision. Failing agreement, the parties were to submit their proposals within 30 days of September 27, 1979. Counsel for Plaintiffs filed their proposal on October 26, 1979. Counsel for the Teamsters timely filed

its proposal on October 29, 1979. Because of clerical problems, the Teamsters' proposal did not come to the Court's attention until after the Court, on November 8, 1979, issued an order directing the Teamsters to show cause why it should not be held in contempt for failure to comply with the Court's order of September 27, 1979. In view of the fact that the Teamsters did timely comply with the Court's order, the Court will rescind its Rule to Show Cause.

Plaintiffs request two forms of notification of the Court's order of September 27, 1979. They request that the Court order the Teamsters to publish a notice in the Teamsters' magazine, *International Teamster*, and that the Court direct the Teamsters to notify officials of Teamster locals by mail and by means of the Teamsters' computer system. Plaintiffs contend that the second notification is necessary to prevent local officials from intimidating union members. It is the Court's view that the record in this case does not support a remedy beyond notification to Teamster members by means of publication in the *International Teamster*. There is nothing in the record to justify Plaintiffs' contention that union members have or will be subject to threats and intimidation by officials of Teamster locals.

The parties were able to agree that the notice should be placed in the first half of the *International Teamster*. In addition, the parties agree that the text shall be in the same black type face as is normally used for news articles and that the article shall be enclosed by a border. Parties, however, were not able to agree to the content of the notice and several other matters relating to its presentation. After reviewing the proposed notices, the Court will fashion its own notice based upon the parties' proposals.

NOW, THEREFORE, IT IS ORDERED THAT

1. The Court's rule to show cause dated November 8, 1979 is rescinded.

2. Defendant International Brotherhood of Teamsters shall publish in the January, 1980 issue of the *International Teamster*, Volume 77, No. 1, the text of paragraphs 3 and 4 of the notice set forth in Appendix A, according to the following specifications:

2.1 The text shall be set in the same black typeface as is normally used for news articles and the topical heading, "LEGAL NOTICE TO ALL MEMBERS" shall be in red, upper-case letters, no less than 12-point type, and the headline shall be in black letters, no less than 18-point type.

2.2 The text shall be boxed within a black border.

2.3 The article shall appear in the first half of the magazine.

2.4 The article shall be listed by its headline in the Table of Contents.

2.5 Plaintiffs' counsel shall be afforded the opportunity to see the galley proofs prior to publication.

/s/ Muir
MUIR,
U.S. District Judge

APPENDIX A

LEGAL NOTICE TO ALL MEMBERS

Federal Court Voids Provision In IBT Constitution as Infringing Upon Right to Sue Union

The United States District Court for the Middle District of Pennsylvania, by order of Judge Malcolm Muir, has invalidated as violating the Labor-Management Reporting and Disclosure Act of 1959 a provision in the IBT Constitution which authorizes the union to require members to reimburse the union for its attorney fees when their suits are unsuccessful. The Court not only struck down Article XIX, Section 12(b), the provision in question, but found that its presence in the Constitution unlawfully discouraged members from bringing legal actions. The IBT has taken an appeal to the United States Court of Appeals for the Third Circuit. The filing of the appeal in no way affects the validity of Judge Muir's order prohibiting the enforcement of § 12(b). The IBT was ordered to publish this notice informing the Union membership that the provision had been set aside.

The invalidated provision reads as follows:

> Where a member, officer, elected Business Agent, Local Union, Joint Council or other subordinate body, before or following exhaustion of all remedies provided for within the International Union, resorts to a court of law and loses his or its cause therein, all costs and expenses incurred by the International Union may be assessed against such individual, Local Union, Joint Council or other subordinate body, in the nature of a fine, subject to all penalties applicable where fines remain unpaid.
>
> Where such court action is by an individual or by a Local Union, Joint Council or other subordinate

body against a Local Union, Joint Council or other subordinate body, the foregoing provision in respect to the payment of costs and expenses shall be applicable in favor of the Local Union, Joint Council or other Subordinate body proceeded against in court.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 79-2587 & 79-2780

PAWLAK, JOHN A. AND STAFFORD, JAMES,

v.

GREENAWALT, CHARLES E., LOCAL UNION NO. 764, TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, TEAMSTERS JOINT COUNCIL NO. 53 AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,
Charles E. Greenawalt and Local Union No. 764
Teamsters, Chauffeurs, Warehousemen and Helpers,

Appellants

On Appeal from the United States District Court
For the Middle District of Pennsylvania

(D.C. Civil No. 78-1035)

Present: ADAMS, VAN DUSEN AND HIGGINBOTHAM,
Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel on June 10, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed September 27, 1979, be, and the same is hereby affirmed. Costs taxed against appellants.

ATTEST:

/s/ [Illegible]
Clerk

August 20, 1980

STATUTORY PROVISIONS

29 U.S.C. § 411(a)(4) provides:

> No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage or participate in, except as party, any such action, proceeding, appearance, or petition.

29 U.S.C. § 412 provides:

> CIVIL ENFORCEMENT
>
> Section 102. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 78-1035

JOHN A. PAWLAK, ET AL.,
Plaintiffs,

vs.

CHARLES E. GREENAWALT, ET AL.,
Defendants

Complaint Filed 10/23/78

(Judge Muir)

ORDER

1. Defendants' motions for summary judgment are denied.

2. Plaintiffs' motion for summary judgment is granted.

3. Article XIX, § 12(b) of the Teamsters' Constitution violates 29 U.S.C. § 411(a)(4).

4. The fine imposed on Pawlak violates 29 U.S.C. § 411(a)(4).

5. Defendants are permanently enjoined from enforcing Teamsters' Constitution, Article XIX, § 12(b).

6. Defendants are permanently enjoined from collecting or attempting to collect the fine of $2635 imposed on Pawlak.

7. Counsel for Plaintiffs and the Teamsters shall attempt to agree on a form of notice of this order to be published by the Teamsters as well as a proposal for publication and shall file an agreed upon notice and proposal for publication within 20 days from the date of

this order. If they are unable to agree, each party shall submit its form of notice and proposal for publication within 30 days from the date of this order. The Court will then issue an order with respect to the publication of the notice.

8. The pre-trial conference for this case scheduled for November 1, 1979 is cancelled.

/s/ Muir
MUIR
U.S. District Judge

DATED: September 27, 1979